NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2001-KA-0628**
VERSUS	*	**COURT OF APPEAL**
HERBERT L. YOUMANS	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 416-868, SECTION "K"
Honorable Arthur Hunter, Judge
* * * * * *
Chief Judge William H. Byrnes III
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(Court composed of Chief Judge William H. Byrnes III, Judge Miriam G. Waltzer,
Judge James F. McKay III)

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CONVICTION AND SENTENCE AFFIRMED

Herbert L. Youmans was charged by bill of information on September 22, 2000, with possession of cocaine in violation of La. R.S. 40:967(C). At his arraignment on September 27th he pleaded not guilty. At a hearing on November 8th probable cause was found and the motion to suppress the evidence was denied. A six-member jury found him guilty of attempted possession of cocaine after trial on November 20th. The state filed a multiple bill accusing the defendant as a third offender, and on April 27, 2001, after being advised of his Boykin rights, Youmans pleaded guilty to the bill. He was then sentenced to serve forty months at hard labor as a third time offender under La. R.S. 15:529.1. The trial court recommended Youmans be placed in boot camp in Orleans Parish Prison. The defendant's motion for an appeal was granted.

At trial Officers Bryan Bordes and Lejon Roberts testified that they were on proactive patrol about 10 p.m. on August 27, 2000, in the 1200 block of Oretha Castle Haley Boulevard when they observed a man prone in a grassy lot. The officers stopped and asked the man to stand; Officer Roberts helped the man, later identified as Herbert Youmans, rise. The officers then asked him to walk to the police car, and Youmans staggered as he walked. They also noted that Youmans "reeked" of alcohol, had slurred speech, and bloodshot and glassy eyes. The defendant was arrested because he appeared to be a danger to himself and others. After reading the Miranda rights to him, Officer Bordes made a search incident to arrest and found in the defendant's right front pocket a glass tube he recognized to be a crack pipe from his experience as a police officer. Youmans was charged with possessing drug paraphernalia and public drunkenness. Officer Bordes did not book Youmans with possession of cocaine because, the officer said, he did not have the tools to test the pipe for cocaine. Officer Roberts described the pipe as "a white glass tube with an unknown type wire mesh, probably, a brillo pad with some white powder residue, partially chipped on one side with burn marks on it." When asked why the defendant was booked with possession of drug paraphernalia rather than possession of cocaine, Officer Roberts said he could not tell what type of residue the pipe contained. He

remarked "[w]e can see the unknown type of residue," but "[w]e let the Criminalist" name it. Officer Harry O'Neal, an expert in the analysis of controlled, dangerous substances, testified that he received the glass tube containing a white residue that was taken from Youmans, and he tested the residue. The officer performed two conclusive tests on the residue and found that it was cocaine. Officer O'Neal stated that such a pipe is used only for the purpose of ingesting cocaine.

In a single assignment of error, the defendant argues that the evidence is insufficient to support the conviction because there is no proof that he knowingly and intentionally attempted to possess cocaine.

This court set out the well-settled standard for reviewing convictions for sufficiency of the evidence in cocaine residue cases in State v. Guillard, 98-0504 (La. App. 4 Cir. 4/7/99), 736 So. 2d 273, as follows:

> The standard of review for the sufficiency of the evidence is whether, viewing the evidence in a light most favorable to the prosecution, a rational trier of fact could have found that the State proved the essential elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); State v. Jacobs, 504 So.2d 817 (La. 1987).
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> To support a conviction for possession of cocaine, the State must prove that the defendant was in possession of the illegal drug and that he knowingly possessed it. State v. Lavigne, 95-0204 (La. App. 4th Cir. 5/22/96), 675 So. 2d 771, writ den., 96-1738 (La. 1/10/97), 685 So. 2d 140; State

> v. Chambers, 563 So. 2d 579 (La. App. 4th Cir. 1990). The State need not prove that the defendant was in actual physical possession of the cocaine; constructive possession is sufficient to support a conviction. To prove attempt, the State must show that the defendant committed an act tending directly toward the accomplishment of his intent to possess cocaine. Chambers, 563 So.2d at 580.
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> The elements of knowledge and intent are states of mind and need not be proven as facts, but rather may be inferred from the circumstances. The fact finder may draw reasonable inferences to support these contentions based upon the evidence presented at trial. State v. Reaux, 539 So.2d 105 (La.App. 4th Cir.1989).

In State v. Guillard, 98-0504 (La.App. 4 Cir. 4/7/99), 736 So.2d 273, this court affirmed the defendant's conviction for attempted possession of cocaine where the arresting officer seized a metal crack pipe from one of the defendant's pants pockets. The arresting officer observed that the crack pipe contained a small amount of crack cocaine residue inside. A police criminalist rinsed the pipe with methanol, and, as in the instant case, he stated that the test proved the substance was cocaine.

The defendant maintains that his case is similar to State v. Postell, 98-0503, (La.App. 4 Cir. 4/22/99), 735 So.2d 782, where this Court reversed the defendant's conviction for possession of cocaine. There, the arresting officer retrieved a crack pipe from the sidewalk where the defendant was

standing. The officer said he could not detect the presence of cocaine at the time of the arrest. The testing expert stated that the residue found in the crack pipe as a result of the tests performed was not visible to the naked eye, and that the only way he could discover its presence was by performing sensitive scientific tests. Postell, 98-0503 at pp. 8-9, 735 So.2d at 787.

However, in the case at bar, the pipe was found in the defendant's pocket, and Officer Roberts testified that he noted the white residue as well as the burned end of the pipe. These two important facts distinguish the instant case from Postell.

In the recent case of State v. Drummer, 99-0858 (La.App. 4 Cir. 12/22/99), 750 So.2d 360, writ denied, 2000-0514 (La. 1/26/01), 781 So.2d 1257, this court affirmed the conviction of a defendant for possession of cocaine, where the defendant was found in possession of two crack pipes, which, the court found, was in and of itself evidence of guilty knowledge by the defendant that he possessed cocaine. In addition, a police officer in Drummer testified that he observed burned cocaine residue on the end of the pipe. This court distinguished Drummer from Postell, 735 So.2d 782, on the grounds that, as in Guillard,736 So.2d 273, one of the arresting officers testified that he observed cocaine in the crack pipe.

In the instant case the defendant was found in possession of the crack

pipe, evidence in itself of guilty knowledge, along with an observable white powder residue which tested positive for cocaine. Viewing all of the evidence in light most favorable to the prosecution, any rational trier of fact could have found that defendant in the case at bar knowingly and intentionally attempted to possess a pipe containing crack cocaine residue– all of the essential elements of the offense of attempted possession of cocaine.

Accordingly, there is no merit to this assignment of error.

For the foregoing reasons, the defendant's conviction and sentence are affirmed.

CONVICTION AND SENTENCE AFFIRMED